Do these decisions deprive B of a legal right which he has obtained for value and without a charge upon his conscience? The answer must depend entirely upon the right which he actually gets by his bargain. And it would seem that he gets nothing more than a security title which he is only conditionally entitled to retain. If the obligee first assigns to B and delivers the mortgage but retains the bond, he must hold the bond on a constructive trust for the benefit of B. B holds the mortgage title as security for the payment of the debt, but with full knowledge that it is a mere security title. Consequently, he must be taken to know that his right to retain that security depends wholly upon his interest as *cestui que trust* in having the debt paid to his trustee. He, of course, intends to perfect his right to the security by later obtaining possession of the bond; but if in the meantime the obligee, in violation of the constructive trust, assigns and delivers the bond to A, who has no notice of the trust, B's rights as *cestui* sink, and his right to the security perishes with them. The same conclusion must be reached where A's assignment is prior, for the measure of B's right in that which he knowingly takes as security is his right in the obligation secured.

RIGHT TO TRIAL BY JURY IN CRIMINAL CASES UNDER THE FOURTEENTH AMENDMENT. — The fourteenth amendment to the Constitution of the United States provides that no state shall "deprive any person of life, liberty, or property, without due process of law." From state legislation which would infringe this right to "due process," an appeal lies to the federal courts.[1] The District Court of the Southern District of Georgia lately decided that this amendment guarantees a jury trial to municipal offenders sentenced to infamous punishment; and that a Georgia statute providing for the summary infliction of such punishment was unconstitutional. *Jamison* v. *Wimbish*, 130 Fed. Rep. 351. This case raises the question how far the amendment necessitates a jury trial in criminal cases. The courts which have interpreted the amendment most favorably for the principal case have gone no further than to say that it confirmed this right in all cases where the accused had it by the system of law obtaining in the state prosecuting him, at the time of the adoption of the amendment.[2] From the earliest times magistrates have exercised summary jurisdiction over municipal offenses.[3] This was the practice in Georgia at the time the amendment was adopted.[4] Nor does the infliction of infamous punishment entitle the prisoner to a jury trial. Such punishments were imposed summarily by justices of the peace at common law.[5] If then cases such as the principal case were dealt with summarily by the common law of Georgia at the time the amendment was adopted, and infamous punishment could be inflicted by a court without a jury, the constitutional provision was not violated by the Georgia statute.

It is not proposed, however, to reach this result merely on the ground that the principal case is not within even the above interpretation of the amend-

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[1] Allen *v.* Georgia, 166 U. S. 138, 140; Wilson *v.* North Carolina, 169 U. S. 586, 593.

[2] Callan *v.* Wilson, 127 U. S. 540, 549; *In re* Kemmler, 136 U. S. 436, 448.

[3] See Byers *v.* Commonwealth, 42 Pa. St. 89; Green *v.* Superior Court of San Francisco, 78 Cal. 556.

[4] Williams *v.* City Council of Augusta, 4 Ga. 509; Floyd *v.* Commissioners of Eatontown, 14 Ga. 354.

[5] See 3 Burn, Justice of the Peace, 30th ed., 142; see also St. of James I., c. 4.

ment, but rather on the theory that the fourteenth amendment does not include the right to trial by jury. The authorities cited by the court in the principal case in support of the right to such trial are hardly in point ;[6] since those cases arose in federal jurisdictions where the fifth and sixth amendments applied ;[7] and these amendments have no application to prosecutions for crimes against a state.[8] On the other hand Justice Bradley, who in the slaughter-house cases carried the force of the fourteenth amendment further than any other member of the court, later said with reference to this amendment: "There is nothing in the constitution to prevent any state from adopting any system of laws or judicature it sees fit for its territories."[9] States should be allowed to do away with jury trial to-day as readily as they could before 1870. On this ground only, can the extension by statute of equity jurisdiction be supported. To limit states to the procedure then in vogue would make no allowance for progress in systems of judicature induced by new conditions. Nor does it seem right so to interpret the amendment as to sanction summary conviction in one state and to forbid it in another, merely because the one had allowed itself such jurisdiction before 1870, and the other had not. Any legal procedure in accord with the established usage in England and America and in conformity with the constitution and laws of the United States, or with its treaties, should be considered "due process of law."[10] Such an interpretation of "due process" is adopted by the Supreme Court in civil cases ;[11] and while this question has not been squarely raised in criminal cases, there seems no reason for holding that what is "due process" as to the former is not "due process" as to the latter, since the same safeguards are extended to "life, liberty, or property."

PART PERFORMANCE UNDER THE STATUTE OF FRAUDS. — It is well established that equity will not allow one party to an oral contract for the sale of land to set up the statute of frauds when the other party, in reliance on this contract, has partially performed.[1] In determining what acts constitute a sufficient part performance to take the case out of the statute, the English courts and the majority of the courts in this country seem to require only that the acts must be overt, and of such a nature that they may be unequivocally attributed to the existence of an oral agreement.[2] Under this rule the courts have held that mere entry by the purchaser under the oral contract was enough to take the case out of the statute,[3] while on the other hand a tenant in possession who made improvements on the premises relying on an agreement to extend his lease was denied specific performance because his acts, not being inconsistent with the original tenancy, could not be unequivocally attributed to the existence of the parol agreement.[4] Such

6 United States *v.* Johanssen, 35 Fed. Rep. 411 ; *In re* Mills, 135 U. S. 263 ; Callan *v.* Wilson, *supra.*

7 *In re* Sawyer, 124 U. S. 200 ; Eilenbecker *v.* Plymouth Co., 134 U. S. 31.

8 Brooks *v.* Missouri, 124 U. S. 397.

9 Missouri *v.* Lewis, 101 U. S. 22, 31.

10 Hurtado *v.* California, 110 U. S. 538 ; Lowe *v.* Kansas, 163 U. S. 81, 85.

11 Walker *v.* Sauvinet, 92 U. S. 90 ; see also Hallinger *v.* Davis, 146 U. S. 314.

1 Browne, Stat. of Frauds, ch. xix. ; Mundy *v.* Jolliffe, 5 Myl. & Cr. 167.

2 Maddison *v.* Alderson, L. R. 8 App. Cas. 467 ; Harris *v.* Knickerbacker, 5 Wend. (N. Y.) 638.

3 Pain *v.* Coombs, 1 De G. & J. 34.

4 Frame *v.* Dawson, 14 Ves. Jun. 385.